



1 United States Parole Comm'n, 774 F.2d 975, 979 (9th Cir. 1985). The  
2 exhaustion requirement, however, is not jurisdictional in section 2241  
3 cases. Rivera v. Ashcroft, 394 F.3d 1129, 1139 (9th Cir. 2005).  
4 Rather, "[e]xhaustion of administrative remedies is not required where  
5 the remedies are inadequate, inefficacious, or futile, where pursuit  
6 of them would irreparably injure the [petitioner], or where the  
7 administrative proceedings themselves are void." United Farm Workers  
8 of America v. Arizona Agr. Emp. Rel. Bd., 669 F.2d 1249, 1253 (9th  
9 Cir. 1982); see also Fraley v. United States Bureau of Prisons, 1 F.3d  
10 924, 925 (9th Cir. 1993).

11 The BOP has established administrative remedy procedures which  
12 may be used by a federal prisoner to seek review of any aspect of his  
13 or her imprisonment. 28 C.F.R. § 542.10 et seq.; Nigro v. Sullivan,  
14 40 F.3d 990, 992 (9th Cir. 1994). Under these procedures, a prisoner  
15 first attempts to informally resolve a complaint at the institution in  
16 which he or she is incarcerated. 28 C.F.R. § 542.13. Next, a  
17 prisoner

18 complains to the warden (on a BP-9 form) and may appeal to  
19 the Bureau's Regional Director (on a BP-10 form). If the  
20 prisoner is not satisfied with the Regional Director's  
21 decision, the prisoner may appeal to the General Counsel's  
22 Office (on a BP-11 form). Appeals must be filed within  
23 established time limits. A prisoner must appeal to the  
24 Regional Director "within twenty (20) calendar days of the  
25 date of the warden's response" and to the General Counsel's  
26 Office "within thirty (30) calendar days from the date of  
27 the Regional Director's response."  
28

1 Nigro, 40 F.3d at 992 (quoting 28 C.F.R. §§ 542.14 & 542.15).

2 Respondent has submitted the declaration of Jeff Vize ("Vize  
3 Decl.") to establish nonexhaustion. [See Motion to Dismiss,  
4 Declaration]. Mr. Vize is an Attorney Advisor employed by the BOP at  
5 the Consolidated Legal Center in Los Angeles, California, which  
6 provides legal services to USP Victorville. Mr. Vize states that a  
7 review of the BOP's logs and records concerning administrative  
8 remedies sought by inmates incarcerated within the federal  
9 correctional system reveals that petitioner has not submitted any  
10 administrative remedy requests during his incarceration with the BOP.  
11 [Vize Decl. 1-4].

12 Petitioner concedes that he has not exhausted his administrative  
13 remedies. [Points and Authorities in Support of Petition at 9-10].  
14 Furthermore, although he alleges that the BOP "consistently" adopts a  
15 position contrary to his claim for credits, he has not alleged or  
16 shown that the BOP administrative remedies available to him would have  
17 been inadequate, inefficacious, or futile with respect to obtaining a  
18 proper calculation of his sentence, that his pursuit of those remedies  
19 would have caused him irreparable injury,<sup>1</sup> or that any administrative  
20 proceedings would have been void. See Saelua v. Woodring, 2008 WL  
21 591046, \*2 n. 6 (C.D.Cal. 2008) (holding that the futility exception  
22 to the exhaustion requirement did not apply to claim for failure to  
23 credit time served in state custody). To the contrary, computation of  
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25 <sup>1</sup> Petitioner seeks credit for approximately two years he spent  
26 in state custody. His current projected release date, presuming he  
27 earns all available good conduct credits, is January 6, 2015.  
28 Because his release date is not imminent, he would not suffer  
prejudice if he is required to seek relief through the available  
administrative procedures before obtaining federal habeas review.

1 the length of petitioner's sentence is precisely the type of claim  
2 that would benefit from exhaustion of administrative remedies. As the  
3 Ninth Circuit has explained:

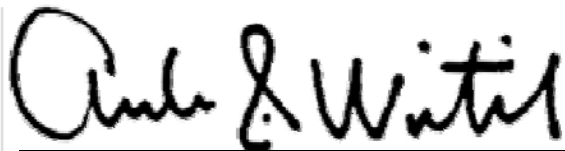
4 The requirement of exhaustion of remedies will aid judicial  
5 review by allowing the appropriate development of a factual  
6 record in an expert forum; conserve the court's time because  
7 of the possibility that the relief applied for may be  
8 granted at the administrative level; and allow the  
9 administrative agency an opportunity to correct errors  
10 occurring in the course of administrative proceedings.

11 Chua Han Mow v. United States, 730 F.2d 1308, 1313 (9th Cir. 1984),  
12 cert. denied, 470 U.S. 1031 (1985) (quoting Ruviwat v. Smith, 701 F.2d  
13 844, 845 (9th Cir. 1983) (per curiam)).

14 In the circumstances of this case, petitioner's failure to  
15 exhaust his administrative remedies constitutes a sufficient ground  
16 for dismissing the petition without prejudice to the filing of a new  
17 petition after he has exhausted his administrative remedies.  
18 Accordingly, the petition is dismissed without prejudice.

19 **It is so ordered.**

20  
21 Dated: July 14, 2008

A handwritten signature in black ink, appearing to read "Andrew J. Wistrich", is written over a horizontal line.

22  
23 Andrew J. Wistrich  
24 United States Magistrate Judge  
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26  
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